

EXHIBIT 1

In The Matter Of:
*McDONALD'S USA, LLC, A JOINT
EMPLOYER, et al and
FAST FOOD WORKERS COMMITTEE &
SEIU*

*Vol. 13
March 14, 2016*

*Burke Court Reporting, LLC
1044 Route 23, Suite 316
Wayne, NJ 0747
(973) 692-0660*

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

MCDONALD'S USA, LLC, A JOINT
EMPLOYER, et al,

Respondents, Case No. 02-CA-093893, et al
04-CA-125567, et al
13-CA-106490, et al
20-CA-132103, et al
25-CA-114819, et al
31-CA-127447, et al
and
FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC,

Charging Parties.

The above-entitled matter came on for hearing pursuant to
Notice, before THE HONORABLE LAUREN ESPOSITO, Administrative
Law Judge, at the National Labor Relations Board, Region 2,
26 Federal Plaza, Courtroom A-238, New York, New York, 10278,
on Thursday, March 14, 2016, at 10:09 a.m.

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A P P E A R A N C E S (Continued)

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1 MR. RUCKER: Okay.
2 JUDGE ESPOSITO: And then we'll take a break for lunch.
3 (Pause)
4 JUDGE ESPOSITO: Let's go back on the record.
5 BY MR. RUCKER:
6 Q I'm showing you GC Exhibit F-69, Bates Number 33454, which
7 is a 1999 franchise agreement between McDonald's and Reginald
8 Jones for 1611 North Meridian Street, correct?
9 A Correct.
10 (Pause)
11 Q And GC Exhibit F-70, Bates Number 33493 would be the
12 corresponding operator's lease for that property and that
13 agreement?
14 A That's what it appears to be. Yes.
15 Q And then GC Exhibit F-71, Bates Number 33511 is an
16 operator's lease for the same property?
17 A This actually lists a different address, I believe.
18 Q This one is marked 1601 North Meridian, but I believe that
19 McDonald's has stipulated that the -- this actually applies to
20 1611 North Meridian in their description of the document Bates
21 33511.
22 MR. GOLDSMITH: We'll have to check on that. I can't do
23 that by memory.
24 JUDGE ESPOSITO: Okay. We'll set it aside.
25 MR. RUCKER: I think it should be in this list of

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1 documents, though. The redacted --
2 MR. GOLDSMITH: Jaime, what number did you say?
3 MR. RUCKER: 33511, I believe.
4 (Pause)
5 MR. GOLDSMITH: Why don't we just set it aside, Your
6 Honor? I would -- as you suggested and then we can look at it
7 during the lunch hour.
8 JUDGE ESPOSITO: Yeah. They can take a look at it --
9 MR. RUCKER: Okay.
10 JUDGE ESPOSITO: -- during lunch.
11 BY MR. RUCKER:
12 Q And this GC Exhibit F-72, Bates Number 33483 is the 1999
13 assignment for -- from Reginald Jones to Faith Corporation; is
14 that correct?
15 A Correct.
16 MR. RUCKER: With the setting aside of GC Exhibit F-71, I
17 move for the admission of these three documents.
18 JUDGE ESPOSITO: Any objection?
19 MR. GOLDSMITH: Same objection as previously noted, Your
20 Honor.
21 JUDGE ESPOSITO: Okay. General Counsel's Exhibits 69, 70
22 and 72 are admitted. General Counsel 71 we'll set to the side
23 so that McDonald's can review whatever representations have
24 been made with regard to the address to which it's applicable.
25 (General Counsel's Exhibit Nos. F-69, F-70 & F-72

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1 received)
2 (Pause)
3 BY MR. RUCKER:
4 Q 70 East Garfield. This is GC Exhibit F-45, Bates Number
5 10342. It is a 2002 franchise agreement between McDonald's and
6 Keith Allen for property at 70 East Garfield?
7 A That's what it appears to be, yes.
8 Q In Chicago, Illinois.
9 Next, GC Exhibit F-46, Bates 30980 is the Exhibit A,
10 operator's lease, for that franchise agreement?
11 A I can't tell a date. That would appear to be the case.
12 Q Did I read the Bates Number? If not, it's 30980.
13 Next is GC Exhibit F-48, Bates 10554, a 2002 assignment
14 from Keith Allen to K-Mart Enterprises, correct?
15 A That's what it appears to be.
16 Q And then GC Exhibit F-47, Bates 10338. It's an assignment
17 from 2012 for -- from Keith Allen to the Keith Allen
18 Declaration of Trust?
19 A That's what it appears to be, yes.
20 Q Okay. And it's for the same property, correct, 70 East
21 Garfield in Chicago, Illinois?
22 A That appears to be the case, yes.
23 Q Okay.
24 MR. RUCKER: I would move for the admission of GC Exhibits
25 45, 46, 48 and 47.

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1 JUDGE ESPOSITO: Okay. Mr. Goldsmith, same objection?
2 MR. GOLDSMITH: Same objections, Your Honor. Thank you.
3 JUDGE ESPOSITO: I'm going to overrule the objections and
4 admit General Counsel's Exhibits F-45 through F-48.
5 (General Counsel's Exhibit Nos. F-45 through F-48
6 received)
7 MS. KRIEGER: Your Honor, I would beg just a question
8 again for Mr. Goldsmith so that I'm clear in my notes. Is your
9 objection to -- your standing objection based on relevance,
10 lack of relevance?
11 MR. GOLDSMITH: It -- it's based on relevance and not
12 being the appropriate custodian to get each of these documents
13 in on a document by document basis.
14 MS. KRIEGER: I'm not familiar with the not appropriate
15 custodian. Is that a foundation or --
16 MR. GOLDSMITH: Yeah. It's a foundational -- it's --
17 UNIDENTIFIED SPEAKER: Lack of competence.
18 MR. GOLDSMITH: -- it's Rule 803.
19 MS. KRIEGER: Thank you.
20 MR. GOLDSMITH: Right. 803(6) of the Federal Rules of
21 Evidence, plus lack of personal knowledge under Sec. 602 as
22 well.
23 (Pause)
24 BY MR. RUCKER:
25 Q I'm showing you GC Exhibit F-49, Bates 10502. It's a

EXHIBIT 2

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

MCDONALD'S USA, LLC, A JOINT
EMPLOYER, et al,

Respondents,

and

FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC,

Charging Parties.

Case No. 02-CA-093893, et al
04-CA-125567, et al
13-CA-106490, et al
20-CA-132103, et al
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31-CA-127447, et al

The above-entitled matter came on for hearing pursuant to Notice, before THE HONORABLE LAUREN ESPOSITO, Administrative Law Judge, at the National Labor Relations Board, Region 2, 26 Federal Plaza, Courtroom A-238, New York, New York, 10278, on Tuesday, March 15, 2016, at 10:10 a.m.

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1 is just throwing out documents into the record.

2 MR. RUCKER: No, this is a business record --

3 JUDGE ESPOSITO: Because it has to do with this franchisee
4 that's named in the complaint.

5 MR. GOLDSMITH: But it's still -- so you're not going to
6 ask him any questions about this?

7 MR. RUCKER: I don't know yet. To the extent that he
8 doesn't have any knowledge about the content of this letter, I
9 will get nowhere asking him questions about it, and if it does,
10 we'll sustain any objection you have.

11 MR. GOLDSMITH: Well, no --

12 MR. RUCKER: But that doesn't go to its admissibility.

13 MR. GOLDSMITH: It does, if you're trying to get a
14 document in through a person who has -- who doesn't appear on
15 the sheet of paper and whose name doesn't appear in the paper
16 and to whom it was not written --

17 MR. RUCKER: It doesn't need to do that because we've
18 already established that it meets the requirements of business
19 record exception under 803(6). He's testified to all of the
20 elements of the business standard exception, there it is, we
21 don't need to have him identify if he's the author of it, or
22 the recipient of it or anything else.

23 MR. GOLDSMITH: It says, what 803(6) says at the end, "All
24 is shown by the testimony of the custodian." He's not the
25 custodian.

1 MR. RUCKER: Or other qualified representative.

2 MR. GOLDSMITH: Or other qualified witness, qualified
3 witness. So you're telling me how he's a qualified witness.

4 MR. RUCKER: Well, because he testified to the facts
5 necessary to establish that it's a business record, that's all.
6 He was able to testify to those facts, that makes him
7 qualified.

8 MR. GOLDSMITH: You can note our objection.

9 MR. RUCKER: And there's nothing more to it than that.

10 JUDGE ESPOSITO: All right. I'm going to admit the
11 document.

12 MR. GOLDSMITH: And is that the same ruling, Your Honor,
13 for -- no, he set that aside.

14 MR. RUCKER: GC Exhibit F-106. It's a similar business
15 recap letter for -- this is Bates No. 49045 dated February
16 24th, 2014 -- next, GC Exhibit F-107, Bates No. 12400, February
17 21st, 2014 business review report for Linda Dunham.

18 GC Exhibit F 108 Bates No. 12431 dates March 21st, 2012,
19 Linda Dunham business review. GC Exhibit F-111, Bates No.
20 12459, business review report for James Lewis datesd November
21 14th, 2012.

22 GC Exhibit F-112, Bates No. 12097, business review report
23 for Rick Cisneros, dated March 2nd, 2012. GC Exhibit F-113,
24 Bates No. 12121, business review report for -- dated November
25 12th, 2013 for Richard Cisneros -- for Rick Cisneros.

EXHIBIT 3

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

McDONALD'S USA, LLC, A JOINT
EMPLOYER, et al,

Respondents,

and

FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC,

Charging Parties.

Case No. 02-CA-093893, et al
04-CA-125567, et al
13-CA-106490, et al
20-CA-132103, et al
25-CA-114819, et al
31-CA-127447, et al

The above-entitled matter came on for hearing pursuant to Notice, before THE HONORABLE LAUREN ESPOSITO, Administrative Law Judge, at the National Labor Relations Board, Region 2, 26 Federal Plaza, Courtroom A-238, New York, New York, 10278, on Monday, March 21, 2016, at 10:03 a.m.

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1 take calls on one specific tool.

2 MR. HERLANDS: Your Honor, I would move for the admission
3 of GC Exhibit HR-13.

4 MR. GOLDSMITH: Objection. No foundation. The witness
5 has testified she doesn't know anything about this document,
6 never seen it before. I mean, how can it come in through this
7 witness?

8 MR. HERLANDS: Your Honor, I would argue that it's been
9 pre-authenticated. It refers to GC Exhibit 11 and 12 that have
10 already been admitted, the Plan to Win people -- Plan to Win
11 people first self-assessment. It's a McDonald's document. I
12 think it's clearly relevant.

13 JUDGE ESPOSITO: Are you contending that it's not
14 relevant, Mr. Goldsmith? Is that the basis for your objection?

15 MR. GOLDSMITH: Certainly not through this witness. I
16 don't want to rehash everything that we went over with respect
17 to the FORs and the SORs, but the fact that it's authenticated
18 has nothing to do with the admissibility as the Court
19 recognized.

20 This witness is certainly not competent within the meaning
21 of the federal rules to get this document in. I don't know
22 what else is, you know, is part of this document, if anything.
23 You know, it's obviously just a -- you know, four pages of what
24 -- well, however many pages, four or five pages of what might
25 be a multi-page document. I just don't see how it comes in

1 through this witness.

2 JUDGE ESPOSITO: Do you have an objection with respect to
3 the relevance of the document?

4 MR. GOLDSMITH: I have that objection as well.

5 JUDGE ESPOSITO: Okay. What -- do you have any response
6 to the objections that Mr. Goldsmith is making, Mr. Herlands?

7 MR. RUCKER: I mean, in terms of the relevance it's a
8 coaching guide for operations consultants. It says what it
9 says, that to implement this Plan to Win people first self-
10 assessment that touches on things like orientation, lower
11 turnover, guest count sales cash flow, competitive pay. I
12 mean, it's stuff that clearly touches on terms and conditions.

13 So to the extent that it's relevant I think it's clearly
14 relevant. It's been pre-authenticated. She's -- she knows
15 what the Plan to Win people first self-assessment is.

16 JUDGE ESPOSITO: Okay. I mean, I agree that it's
17 relevant. But the issue is that this coach guide was not
18 something that she had anything to do with. So now we're back
19 to this issue with respect to auth --

20 MR. HERLANDS: And I will say again I believe that this is
21 one of the documents that was listed that she could testify to
22 in that October -- I don't want to rehash the --

23 JUDGE ESPOSITO: In the chart?

24 MR. HERLANDS: -- October 27 letter.

25 JUDGE ESPOSITO: On the chart?

1 MR. HERLANDS: Yeah.

2 JUDGE ESPOSITO: That was --

3 MR. GOLDSMITH: It was one of the topics about what she
4 could testify and she's testified about it. The fact that she
5 was identified to testify about a topic doesn't mean that she
6 can testify to any degree of certainty about every single
7 document that's part of the -- you know, that's related to the
8 topic, if you will.

9 I mean, the document speaks for itself including the
10 disclaimer at the bottom. I mean, I just don't understand even
11 why this is being moved in through this witness, or sought to
12 --

13 JUDGE ESPOSITO: Well --

14 MR. GOLDSMITH: -- be moved in.

15 JUDGE ESPOSITO: Well, because it has to do with the Plan
16 to Win people first self-assessment. It's some kind of a
17 component of that which was outside the area that -- of her
18 responsibilities. So she didn't deal with this particular
19 document, although she did deal with the Plan to Win people
20 first self-assessment.

21 So now we're back to this issue with respect to the
22 authentication of the documents that you produced, Mr.
23 Goldsmith.

24 MR. GOLDSMITH: With all due respect, Your Honor, I don't
25 think we are. We've authenticated, I believe, this document.

1 But that doesn't address the admissibility of the document.
2 That's all I'm saying. I mean, you've got a witness and I
3 think I know how you're going to rule. But just let me make
4 the record.

5 We've got a witness here who knows absolutely nothing
6 about the coach guide for operations consultants. Those are my
7 words, not hers. I don't see how a witness who knows nothing
8 about a document can be the witness through whom the document
9 comes in. Just because it's authenticated doesn't answer the
10 admissibility question.

11 MR. ORTIZ: But it's -- Your Honor, if I may.

12 JUDGE ESPOSITO: Sure.

13 MR. ORTIZ: Authentication does go to admissibility.
14 That's part of admissibility. It's been authenticated. You
15 already ruled on relevance. If the question is hearsay it's
16 been created -- it's created by McDonald's. It's a statement
17 being offered against McDonald's. It's not hearsay under
18 801(d). It's not a business record under 803(6). That
19 establishes its admissibility. Whether she can testify to it
20 is a different question.

21 JUDGE ESPOSITO: I understand, Mr. Ortiz. I mean, I
22 really just don't want to be having this argument with respect
23 to every single document for which McDonald's has already
24 stipulated to authenticity. I mean, when you're stipulating to
25 the authenticity of a document, Mr. Goldsmith, are you not

1 stipulating to the factors under 803(6)? Are you not
2 stipulating, in effect, that it's a business record because
3 it's coming from you?

4 MR. GOLDSMITH: What we're stipulating to --

5 JUDGE ESPOSITO: So I don't understand -- I'm sorry. I
6 don't understand how 803(6) is not encompassed by your
7 stipulation with respect to authenticity.

8 MR. GOLDSMITH: Because when we stipulate to authenticity
9 all we are stipulating to is the document is what it purports
10 to be. It purports to be this Plan to Win people, et cetera.
11 In 803(6) at the end of the -- well, maybe not quite at the
12 end, but near the end of what it says as an exception to the
13 hearsay rule is, quote, all as shown by the testimony of the
14 custodian -- which she is not -- or other qualified witness --
15 which she is not. She has testified she doesn't know anything
16 about this document.

17 So I -- look, the -- if -- you know, perhaps we shouldn't
18 have stipulated to authenticity. I mean, if authenticity is a
19 proxy for admissibility, which it clearly cannot be. Even Mr.
20 Ortiz said --

21 JUDGE ESPOSITO: I'm not saying it's --

22 MR. GOLDSMITH: That --

23 JUDGE ESPOSITO: I'm not saying it's a proxy for
24 admissibility. There are other factors that go into
25 admissibility such as relevance.

1 But I'm asking what is authenticity -- you know, I feel
2 like I'm asking an analogical question or something, but what
3 is authenticity if it doesn't encompass the elements of 803(6)
4 and the general proposition that this is a business record?
5 I'm not questioning the witness's testimony about it in the
6 least. I just think that -- I just don't understand what you,
7 in fact, stipulated to if you didn't stipulate to the fact that
8 these were business records.

9 MR. GOLDSMITH: We have -- well, let me back up. And I --

10 JUDGE ESPOSITO: I mean, business records in the context
11 of 803(6).

12 MR. GOLDSMITH: We -- with respect to 803(6) we did enter
13 into a stipulation after the last day of trial, I think on
14 Friday, with respect to we would stipulate that those documents
15 were business records for purposes of 803(6) preserving all our
16 objections, including but not limited to relevance.

17 So, you know, this is getting to be circular. What we
18 stipulated to was -- is what it purports to be. It doesn't
19 mean that it comes in through this witness. I'm just repeating
20 myself. I know what the ruling is going to be. The document
21 is going to come in. Just note our objection for the record.

22 JUDGE ESPOSITO: Well, I mean, the -- but the issue -- I
23 am going to admit the document, but the issue is that you
24 didn't do an affidavit with respect to the elements of 803(6)
25 that would establish -- that would self-authenticate the

1 document under 902(11). And you're saying that there is no --
2 or you seem to be saying last week there is no custodian we can
3 call, okay, to establish that these documents are subject to
4 Federal Rule of Evidence 803(6).

5 So I don't see any alternative other than calling every
6 single person who wrote, actually prepared every single
7 document to have it admitted into evidence other than my just
8 admitting it myself. And as Mr. Ortiz says and as Ms. Krieger
9 may -- said last week, to the extent that there are admissions
10 against interest in the document, you know, they are not
11 hearsay under a different, you know, exception to the hearsay
12 rule.

13 MR. GOLDSMITH: Well, they're not offering it even on that
14 basis. And if there are -- if there's anything in the document
15 that speaks for itself it's the disclaimer with respect to
16 franchisees.

17 But, look, again, Your Honor, I don't want to burden the
18 record with this. This is --

19 JUDGE ESPOSITO: Well, I don't want to --

20 MR. GOLDSMITH: This is closer than the FORs and SORs. I
21 mean, the objection to Mr. Brethauer talking about the FORs and
22 SORs was that it was totally outside the scope of his
23 responsibility. And we addressed that problem with respect to
24 custodians because there are people who are subpoenaed who are
25 -- who actually wrote the documents and then we entered into a

1 stipulation with respect to business records, as I said just a
2 moment ago preserving our obligations -- I'm sorry, our
3 objections.

4 So now we're back at the same point, albeit with a witness
5 who's closer, but still not within the meaning of 803(6) of a
6 qualified witness. So that must mean something in this rule.
7 And to me it means that a document comes in, even if it's a
8 business record, through a person who knows something about the
9 document. Otherwise, you could just take every single document
10 that's in those red wells and just put them in, which I think
11 is not appropriate under any stretch of the imagination.

12 So, again, I don't want to burden the record anymore.
13 This is --

14 JUDGE ESPOSITO: NO. I don't want to burden the record
15 anymore either, Mr. Goldsmith, and I surely don't want some
16 kind of proceeding that requires the person who personally
17 created every single document testify for it if -- testify to
18 establish, I don't even know. They wouldn't even establish the
19 criteria of 803(6) then because they or someone with personal
20 knowledge who prepared the document, which is not what Section
21 803(6) contemplates at all.

22 MR. GOLDSMITH: And I'm --

23 JUDGE ESPOSITO: So I don't want an extra proceeding for
24 that, you know, parade of thousands of people or whatever to
25 come in and testify about each individual document.

1 MR. GOLDSMITH: But I'm not --

2 JUDGE ESPOSITO: That's not feasible.

3 MR. GOLDSMITH: No. I understand that, Your Honor. I'm
4 not suggesting that. The words, qualified witness mean that a
5 person -- to my understanding that a person through whom a
6 document is going to come in has to be a person who knows
7 something about the document.

8 Now that can be the person who works with the document.
9 That -- it doesn't have to be the person who wrote it. But if
10 there's somebody who knows something about a document, then
11 bring them on. But here you have a witness who's testified
12 over and over again, she doesn't work with -- this is the
13 coach's guide. It doesn't mean --

14 JUDGE ESPOSITO: But you won't produce a custodian of the
15 records.

16 MR. GOLDSMITH: Well, because we're not in a 30(b)(6)
17 deposition. I mean, we produced somebody who could testify
18 generally about the topic. And as I said previously, that
19 doesn't mean that every document that's authenticated is
20 admissible.

21 I mean, I -- again, I don't mean to argue with the Court
22 and I don't want to go over this flowered ground. And you've
23 admitted the document already, so let's just note our objection
24 and move on.

25 JUDGE ESPOSITO: I am admitting the document, but I want

1 to find a way to resolve this issue so that we're not
2 sidetracked with a million objections about the admissibility
3 of documents that you've authenticated that you won't produce a
4 custodian of the record for so that they can be admitted as
5 business records as opposed to requiring every document to have
6 the person who prepared that document come in and give
7 testimony because that's not feasible and it's not an efficient
8 way to try any case, let alone a case of this magnitude.

9 MR. GOLDSMITH: I certainly agree with that. But I can't
10 be put in a position where you're asking me in advance on
11 documents I haven't seen, don't know if they're going to be
12 proposed to be admitted, to come up with some blanket approval
13 that every one of those documents is a business record. I just
14 can't.

15 So -- and this is the first document, the first document
16 today with four or five -- whatever number of hours we are into
17 this where I've taken this position because it's so obvious
18 that this witness doesn't have a clue about this document.

19 JUDGE ESPOSITO: We made it four hours and 20 minutes.

20 (Laughter)

21 MR. GOLDSMITH: I don't get credit for that?

22 JUDGE ESPOSITO: But -- no, you don't, because --

23 MR. GOLDSMITH: Oh, please, Judge.

24 JUDGE ESPOSITO: -- tomorrow -- because tomorrow --

25 MR. GOLDSMITH: Give me a break.

1 JUDGE ESPOSITO: -- we're going to be in this same
2 position with the same witness sitting here while we argue this
3 -- you know, this pointless argument.

4 MR. GOLDSMITH: Well, I don't think it's pointless, Your
5 Honor, but I get it.

6 MR. HIRSCH: Your Honor, this is -- perhaps I -- I'm not
7 sure I want to wade into this. But I will offer --

8 JUDGE ESPOSITO: Think carefully before you do, Mr. --

9 MR. HIRSCH: I'm just going to offer a suggestion since
10 this is a coach guide for operations consultant and obviously
11 this witness is not in operations, I imagine that somebody from
12 the operations line or the operations segment of McDonald's
13 would be a more appropriate witness who may be able to identify
14 this as a business record within the meaning of the rule and
15 shepherd it into evidence.

16 But his witness doesn't have the ability apparently to
17 testify to the elements of -- you know, required to make this a
18 business record under the rule.

19 MR. HERLANDS: Your Honor, I just want to note that if we
20 did that, the beginning of the document is the people first
21 self-assessment. I imagine the operations person would say,
22 oh, that's an HR tool. I don't know what that is. We would
23 run into the same problem. She's testified that she knows
24 about the -- this Plan to Win. I think that's good enough.

25 JUDGE ESPOSITO: All right. Well, as I said before, I'm

1 admitting the document. I really want to -- but I really want
2 to come up with some overall way to deal with this issue that's
3 faster and more efficient than having this argument over and
4 over again, or having the individual who prepared each and
5 every document come and testify. That's what I have to say
6 about that.

7 And if there is no other way to do that, if there is no
8 custodian of the records, if there's no one who can testify
9 that -- under oath that there's not a custodian of the records,
10 if there's no one who can submit an affidavit to the effect
11 that the documents that -- to which the parties have stipulated
12 are authentic, satisfy the criteria of Rule 803(6), I'm just
13 going to be admitting these documents --

14 MR. GOLDSMITH: Well, just --

15 JUDGE ESPOSITO: -- as a general rule.

16 MR. GOLDSMITH: All right. Well, just so we're clear on
17 this, Your Honor, there was -- I don't think there was
18 testimony, but there was certainly a discussion on the last
19 trial day.

20 There is this impression out there that there is some
21 giant repository of every document or every category of
22 documents that exists. It's just not so. It's just not so.
23 There's no button that can be pushed in any one of six or seven
24 departments and say, here, I'm the guy who pushes the button.
25 I'm the custodian of the record.

1 A So as an example, the -- I'm on page 11 it looks like.
2 Make it right, when you don't get it right you always help me
3 make it -- me and make it right. So I've seen that as an
4 example. I haven't seen all these other pages. I can't -- you
5 know, be clean. I could say I've seen that. So I knew that
6 some of these pieces were going to be part of the orientation
7 process.

8 Q Okay.

9 A But at the time didn't know it was going to be in the
10 operator version or company owned version.

11 Q And you didn't know that a specific crew brochure like
12 this was being created? Did you know what those pages were
13 for?

14 A Yes. I knew a brochure was being created. I didn't know
15 it was to this degree or this extent. This looks like --

16 Q And it wasn't --

17 A This looks like a pretty big brochure, so --

18 Q And is it the same two people that would have been created
19 or overseen by Nick Statler and Joe Nassar?

20 A Yes.

21 Q Okay.

22 MR. HERLANDS: Your Honor, I want to move GC Exhibit HR-23
23 into evidence.

24 JUDGE ESPOSITO: Any objection?

25 MR. GOLDSMITH: In addition to the objections I previously

1 noted with respect to Rule 803(6). This witness has testified,
2 as it says on the front cover, that this is an owner operator
3 version. She testified on direct that she has no idea what
4 goes into the owner/operator manual, the franchisee manual.

5 MR. HERLANDS: Well, she's identified something that goes
6 into it. I mean --

7 MR. GOLDSMITH: Well, I'm not -- again, the record will
8 speak for itself. And as Mr. Hirsch noted, if this were
9 perhaps a McCopCo document it would be one thing, but this is a
10 franchisee -- clearly on the face of it a franchisee document.
11 So note my objection.

12 MR. HIRSCH: I also have an objection, Your Honor. My
13 objection is on relevance grounds that unless there is
14 testimony that this is a document that's in use in the
15 Philadelphia franchisee store in question it has no relevance
16 to these proceedings as -- at least as it relates to my client.

17 So I would move to -- I would move to exclude this. I
18 would object to the admission of this document on that basis.

19 MR. BRODY: New York will echo what Mr. Hirsch just said,
20 Your Honor.

21 JUDGE ESPOSITO: Okay. I mean, I think that maybe you
22 should have Mr. Statler or Mr. Nassar testify about this
23 orientation program and these documents. I mean, assuming
24 these documents are part of the orientation --

25 MR. HERLANDS: Right. I mean, we -- I would like to admit

EXHIBIT 4

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BEFORE THE

NATIONAL LABOR RELATIONS BOARD

-----: Case Nos.:
In the Matter of: : 02-CA-093893, et al
McDONALD'S USA, LLC, A : 04-CA-125567, et al
JOINT EMPLOYER, et al, : 03-CA-106490, et al
Respondents, : 20-CA-132103, et al
And : 25-CA-114819, et al
FAST FOOD WORKERS COMMITTEE AND :
SERVICE EMPLOYEES INTERNATIONAL :
UNION, CTW, CLC, :
Charging Parties. :
-----:

The above-entitled matter came on for hearing
Pursuant to Notice, before THE HONORABLE LAUREN ESPOSITO,
Administrative Law Judge, at the National Labor Relations
Board, Region 2, 26 Federal Plaza, Courtroom A-238,
New York, New York, 10278, on Wednesday, September 21, 2016, at
12:03 p.m.

P R O C E E D I N G S

(Time Noted: 12:03 p.m.)

1
2
3 JUDGE ESPOSITO: Hello? Can everyone hear me? This is
4 Judge Esposito. This is Judge Esposito for the -- okay, we're
5 getting some kind of strange feedback here.

6 Could everyone try again? How is that? That sounds
7 better here? Okay. All right. So good afternoon everyone,
8 this is Judge Esposito and this is the status conference to
9 discuss the progress of the case.

10 What I'd like to do first is have everyone note their
11 appearances for the record. The court reporter is here with
12 me, as are Counsel for the General Counsel and counsel for
13 McDonald's.

14 After everyone's made -- I'm sorry, and counsel for
15 Charging Parties, Michael Wissinger. After everyone has made
16 their appearances for the record, we'll go off the record to
17 discuss the progress of the case and the parties' plans for the
18 remainder of their case presentations.

19 So why don't we begin with -- let's go on the record,
20 Adrian. Are we on the record? Okay.

21 General Counsel, could you please make your appearances
22 for the record.

23 MR. RUCKER: Jamie Rucker for the General Counsel.

24 MR. ORTIZ: Alejandro Ortiz.

25 MR. FRISCH: Jacob Frisch.

1 MR. HERLANDS: Zachary Herlands.
2 MS. LANCIA: Nicole Lancia.
3 MR. ROWE: Nicholas Rowe.
4 MR. DUNHAM: Jeff Dunham.
5 MS. SERIE: Aaron Serie (ph).
6 JUDGE ESPOSITO: And for the Charging Parties?
7 MR. WISSINGER: Michael Wissinger.
8 JUDGE ESPOSITO: For McDonald's?
9 MS. KRIEGER: Kathy Krieger.
10 JUDGE ESPOSITO: Okay. I'm sorry, Ms. Krieger.
11 For McDonald's?
12 MR. GOLDSMITH: Willis Goldsmith.
13 MS. DAVIS: Doreen Davis.
14 MS. YOFFE: Ilanya Yoffe.
15 MR. LINAS: John Linas.
16 MR. ROSSMAN: Mike Rossman, and Lupe Lorenzo and Tyler
17 Henry, Your Honor.
18 MR. HUX: Jay Hux for certain Chicago respondent
19 franchisees.
20 JUDGE ESPOSITO: All right. Why don't we -- could we --
21 MR. BENNETT: Pardon me, Barry Bennett for the workers
22 organization committee of Chicago.
23 JUDGE ESPOSITO: I'd like to do the appearances by
24 locations, so could the attorneys for the New York franchisees
25 please make appearances?

1 MR. BRODY: Yes, Your Honor, good afternoon. This is
2 Robert Brody for the New York franchisees.

3 MS. BROGARD: And Kate Brogard, Your Honor.

4 JUDGE ESPOSITO: And, Mr. Hirsch, are you on the line?
5 Mr. Hirsch?

6 No? Okay.

7 MR. HIRSCH: Hello.

8 JUDGE ESPOSITO: Hello, Mr. Hirsch?

9 MR. HIRSCH: Yes, this is Joe Hirsch, sorry I came on a
10 little late, Your Honor.

11 JUDGE ESPOSITO: That's all right. Okay. Now, for the
12 Chicago franchisees appearances, please?

13 UNIDENTIFIED: Your Honor, for RMC Enterprises, RMC,
14 Loughland and Loughland Management, Wright Management, Nornad
15 and Faith Corporation, Louis Dilozenzo and Tyler Hendry from
16 Bond Schoeneck & King.

17 MR. HUX: Your Honor, for Karavites Restaurant, 11102 26
18 5895 667 6, KMart Enterprises, Topaz Management and Taylor and
19 Mobone Management and 7 McD, this is Jay Hux for Fisher &
20 Phillips.

21 JUDGE ESPOSITO: Okay. I'm sorry, sir, I didn't get your
22 -- could you just state your last name again to make sure we
23 understand.

24 MR. HUX: Hux.

25 JUDGE ESPOSITO: Hux.

1 MR. HUX: Yes, Hux, H-u-x.

2 JUDGE ESPOSITO: Okay. Thank you.

3 All right. And for Los Angeles?

4 MR. CRAWFORD: Good morning, Your Honor, this is Roger
5 Crawford on behalf of the California franchisees both Los
6 Angeles and Sacramento, and I also have my associate Jacqueline
7 Yaeger.

8 MR. O'CONNER: And Tom O'Conner is here as well.

9 JUDGE ESPOSITO: Okay. Thank you, everyone. So let's go
10 off the record now.

11 (Recessed at 12:07 p.m.; reconvened at 1:44 p.m.)

12 JUDGE ESPOSITO: Okay. Let's go on the record.

13 All right. During an extensive off the record discussion,
14 the parties reviewed their estimated number of witnesses and
15 proposed trial times for their case presentations in the
16 different phases of the case that are remaining.

17 So first we will deal with the quote/unquote nationwide
18 joint employer presentations that are currently taking place in
19 New York. And, Mr. Rucker, what is your plan for the remainder
20 of the General Counsel's case presentation?

21 MR. RUCKER: As stated, General Counsel intends to present
22 another 25 or if you include MaryJoe Gogoli (ph), 26 business
23 consultants, 3 field service managers, 2 HR directors, 2
24 Philadelphia witnesses, namely another field service manager --
25 yes, field service manager and HR consultant, possibly an

1 additional hiring to win witness and one high level witness
2 regarding McDonald's response to the Fight for 15 campaign.

3 JUDGE ESPOSITO: Okay. And can you estimate the number of
4 days that the presentation of those witnesses will take
5 overall?

6 MR. RUCKER: Approximately 38 days.

7 JUDGE ESPOSITO: And, Mr. Goldsmith, with respect to
8 McDonald's USA's presentation on the joint employer, the
9 nationwide joint employer evidence, can you give any estimate,
10 regardless of when you intend to make your presentation, with
11 respect to how many witnesses or how long your case
12 presentation will take?

13 MR. GOLDSMITH: Your Honor, as I indicated in the off-the-
14 record discussions, I can't estimate the number of witnesses,
15 but I can estimate that it would take us in the area of 400
16 hours to put on a case.

17 JUDGE ESPOSITO: All right. Mr. Rucker, with respect to
18 the -- I'm sorry?

19 MR. GOLDSMITH: Put on that case, I should say, the nation
20 --

21 JUDGE ESPOSITO: That phase of the case --

22 MR. GOLDSMITH: Yes, yes.

23 JUDGE ESPOSITO: -- that phase of the case, okay.

24 Mr. Rucker, with respect to the unfair labor practice
25 allegations in New York, can you estimate the number of

1 witnesses and the trial time?

2 MR. RUCKER: Yes, roughly 23 witnesses and roughly 13 to
3 14 trial days.

4 JUDGE ESPOSITO: And you also stated that you would have
5 joint employer evidence pertaining to the franchisees involved
6 in the New York phase of the case for presentation as well?

7 MR. RUCKER: Correct.

8 JUDGE ESPOSITO: And is that -- is an estimate for that
9 trial time encompassed in the previous --

10 MR. RUCKER: No, that is not. And that is from 8 to 20
11 days depending, and I have not included Philadelphia in that.

12 JUDGE ESPOSITO: Okay. Can you give me a brief estimate
13 of the amount of witnesses and trial time for the allegations
14 against Joe-Dan MadAlisse?

15 MR. RUCKER: Yes, five to six witnesses, three days and
16 then joint -- local joint employer evidence one to two days.

17 JUDGE ESPOSITO: All right. Mr. Brody, can you estimate
18 the approximate number of witnesses and trial time for your
19 presentation on behalf of the New York franchisees, with
20 respect to the unfair labor practice allegations?

21 MR. BRODY: Yes, Your Honor. As we mentioned in the off-
22 the-record conversations we are speculating, we obviously can't
23 be bound by it. We have just heard General Counsel's list of
24 witnesses which we did not know nor consider when we made our
25 estimate.

1 We also preliminarily mentioned that we think it would be
2 appropriate for the General Counsel to tell us what claims
3 they're going to proceed on and what claims they will not. We
4 think that would really be extremely telling and would make our
5 estimate much more accurate, if General Counsel will do that.

6 But since we don't have any of that at this time, we have
7 estimated both ULP and joint employer at approximately 70
8 witnesses. We have 11 different stores that we are
9 representing in New York, 70 witnesses if we are assuming to a
10 day and a day and a half per witness, and we're talking
11 somewhere 70 to 100 approximate days.

12 JUDGE ESPOSITO: Okay. All right. And, Mr. Brody, you
13 also indicated that you intended to present evidence in
14 connection with the nationwide joint employer phase of the
15 case.

16 MR. BRODY: Your Honor, as was discussed at length in the
17 off-the-record conversation, we don't really know the full
18 scope of the General Counsel's case. We don't know whether we
19 will or we won't, but we have estimated in our total number of
20 witnesses and total number of days, we're assuming that is
21 going to include the joint employer issue.

22 JUDGE ESPOSITO: Okay.

23 MR. BRODY: And was included in our estimate.

24 JUDGE ESPOSITO: Okay. Mr. Hirsch, can you give me an
25 estimate of the number of witnesses and time for case

1 presentation with respect to Joe-Dan MadAlisse's response to
2 the unfair labor practice allegations?

3 MR. HIRSCH: Yes, Your Honor. I face a similar, you know,
4 word of caution the fact that is an evolving matter, so all the
5 evidence that's going to be presented by General Counsel, to
6 approximate with respect to the -- with respect to both the
7 unfair labor practice and joint employer aspects of this, we
8 were anticipating approximately six witnesses and approximately
9 five trial days.

10 We -- during the off-the-record discussion I expressed to
11 you my uncertainty about at what point in the proceedings the
12 franchisee counsel would be required to put on joint employer
13 evidence, whether it was franchisee specific or pertinent to
14 the national joint employer case. And, you know, I -- Your
15 Honor was able to off-the-record at least clarify for us, you
16 know, what your expectation was. I don't want to, you know,
17 misstate what Your Honor's ruling was.

18 JUDGE ESPOSITO: Yes, I understand, I understand, Mr.
19 Hirsch. I don't -- none of the respondents will be required to
20 put on evidence with respect to the joint employer allegations
21 until General Counsel finishes with all aspects of their joint
22 employer presentation, whether the nationwide joint employer
23 evidence or the joint employer evidence that's going to be
24 presented in the individual local phases of the case.

25 MR. HIRSCH: Thank you.

1 JUDGE ESPOSITO: All right. Mr. Rucker, how long does
2 General Counsel anticipate that their case presentation in
3 Chicago will take, and how many witnesses will be involved?

4 MR. RUCKER: I'll split this between Chicago and
5 Indianapolis, approximately 40 witnesses in Chicago over about
6 four weeks, and six witnesses in Indianapolis over one day for
7 the ULPs.

8 JUDGE ESPOSITO: And with respect to the joint employer
9 issues?

10 MR. RUCKER: 8 to 20 witnesses, 10 to 20 days.

11 JUDGE ESPOSITO: All right. Mr. DiLorenzo, can you
12 provide an estimate with respect to the number of witnesses in
13 time for case presentation on behalf of your respondent
14 franchisee clients in Chicago?

15 MR. DILORENZO: Yes, Your Honor, obviously with the
16 obvious caveats, we estimate the unfair labor practice trials
17 for our six clients in Chicago somewhere in the neighborhood of
18 20 witnesses, probably take 3 or 4 weeks on ULPs.

19 JUDGE ESPOSITO: Okay.

20 MR. DILORENZO: We don't really have an estimate on the
21 joint employer.

22 JUDGE ESPOSITO: And, Mr. Hux, can you give me those
23 estimates on behalf of the respondent franchisees that you
24 represent, please?

25 MR. HUX: Yes, Judge. With again the caveat that it's

1 speculative at this point we're dealing with very, very rough
2 numbers. We anticipate for the different franchisees, 35 to 40
3 witnesses with respect or specifically with respect to the ULP
4 allegation. Somewhere in the neighborhood of 35 days for the
5 presentation of those witnesses.

6 We do not have an estimate as to the joint employer
7 testimony or joint employer rebuttal testimony at this time.

8 JUDGE ESPOSITO: Okay. And, I'm sorry, Mr. DiLorenzo, did
9 your previous estimate include Faith Corp in Indianapolis?

10 MR. DILORENZO: Yes, Your Honor. It might be another
11 couple of days, but we think four weeks will probably cover all
12 of it, including Faith Corp.

13 JUDGE ESPOSITO: Okay. All right. Mr. Rucker, can you
14 give me an estimate with respect to the case in Los Angeles?

15 MR. RUCKER: For Los Angeles, 10 to 15 witnesses for 5 to
16 10 days for Sacramento, three to four witnesses, one day.

17 JUDGE ESPOSITO: And with respect to the joint employer?

18 MR. RUCKER: Four to eight witnesses/days.

19 JUDGE ESPOSITO: Okay. Mr. Crawford, can you give me
20 estimates on behalf of your clients?

21 MR. CRAWFORD: Yeah, yes, Your Honor, this is with the
22 same reservations that have been expressed.

23 With regard to Respondent MaTZ, Inc., it used to be
24 misspelled in the record --

25 JUDGE ESPOSITO: I'm sorry about that.

1 MR. CRAWFORD: -- approximately 10 witnesses, defense
2 taking two to three days. For the Los Angeles franchisees with
3 Tumangus, approximately five to eight witnesses, again two to
4 three days. E. Bailey Management, approximately five
5 witnesses, one to two days. And Sandra Clarke, respondent,
6 approximately 10 witnesses, then over two to three days.

7 Those estimates are to the unfair labor practice
8 allegations. Some of those witnesses may be duplicate with
9 regard to the localized joint employer, but our preference
10 would be to call those, and we may need to call those again
11 once we get back to the rebuttal phase.

12 JUDGE ESPOSITO: Okay. All right. Thank you, everyone.
13 Is there anything else before we go off the record?

14 (No response)

15 JUDGE ESPOSITO: No? Okay. Hearing nothing, we are off
16 the record until Monday morning at 10 a.m.

17 MR. GOLDSMITH: Thank you, Your Honor.

18 JUDGE ESPOSITO: Thank you.

19 (Whereupon, at 1:57 p.m. the hearing in the above entitled
20 matter was recessed until Monday, September 26, 2016 at 10
21 a.m.)

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